

AMENDED IN SENATE AUGUST 31, 1999

AMENDED IN SENATE AUGUST 16, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

No. 1688

Introduced by ~~Committee on Banking and Finance (Papan (Chair), Cox (Vice Chair), Alquist, Campbell, Florez, Frusetta, Gallegos, Machado, Mazzoni, Pescetti, and Washington)~~ *Assembly Member Papan*

March 18, 1999

An act to amend Sections ~~1300, 2115, 2200,~~ *1300* and 25219 of the Corporations Code, to amend Section 45308.5 of the Government Code, to amend Section 1170.3 of the Harbors and Navigation Code, to amend Sections 1792.2 and 25112.5 of the Health and Safety Code, and to amend Sections 1192.8 and 11521.2 of the Insurance Code, relating to ~~foreign corporations securities.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, ~~Committee on Banking and Finance Papan.~~ *Foreign corporations: California law Securities.*

(1) Existing law provides that a foreign corporation is subject to specified requirements of California law regarding corporate organization, liability, distributions, shareholder remedies, and other matters, if more than  $\frac{1}{2}$  of the outstanding voting securities are held of record by persons with addresses in this state, and the average of the property factor, the payroll factor, and the sales factor with respect to

~~the corporation, as defined, is more than 50% during the latest full income year. Existing law also provides that these provisions do not apply to any corporation with outstanding securities that are listed on the New York or American Stock Exchanges, designated as qualified for trading on the NASDAQ provided that there are at least 800 shareholders thereof as specified, or that are all owned directly or indirectly by a corporation or corporations not subject to these provisions. Existing law also specifies the beginning and ending periods for which these requirements are applicable, based upon a defined time period following an income year in which the above tests are met or not met, or alternatively upon a final order by a court of competent jurisdiction declaring whether or not the corporation meets these tests.~~

~~This bill would provide that for the purpose of determining whether a foreign corporation is subject to these requirements, the address of a shareholder shall be determined as of the record date for the latest meeting of shareholders held during the latest full income year, or if no meeting was held that year, as of the date of the last day of the latest full income year. This bill would also eliminate the requirement that a corporation have at least 800 shareholders of record in order to be exempted from these provisions on the basis that its securities are qualified for trading on the NASDAQ.~~

~~(2) Existing law generally requires corporations to send to its shareholders an annual report, and additionally requires a corporation to comply with written shareholder requests for specified financial information. Existing law provides that these provisions may be enforced by a court of competent jurisdiction, and, under certain circumstances, the shareholder may be reimbursed for reasonable expenses, including attorney's fees, incurred in connection with such an action.~~

~~This bill would provide that a foreign corporation that is subject to specified provisions of California law as discussed above, upon written request, shall, within 30 days, advise any shareholder of record, officer, director, employee, agent, or creditor of the corporation whether or not the corporation is subject to those provisions at the time the request is received.~~

~~The bill would provide that any party who obtains a final determination by a court of competent jurisdiction that the corporation failed to provide this information or provided information that was incorrect, may be awarded court costs and reasonable attorney's fees to the extent they relate to obtaining that final determination. The bill would also provide that existing statutory damages provisions would apply in this situation and would run from the date the written request for information is received by the corporation, and that no additional request for information need be made for this statutory penalty to attach.~~

~~(3) The~~

~~Existing law regulates the ownership and sale of, and investment in, securities registered on a national security exchange, as provided by federal law.~~

~~The bill would additionally incorporate and make applicable to securities listed on the National Market System of the NASDAQ Stock Market various provisions of state law relating to the following: the purchase of dissenting shares in connection with a corporate reorganization; the suspension of over-the-counter trading by agents and broker-dealers; a conflict of interest code for pilots involving the ownership of tugboats; the composition of reserves required to be maintained by entities executing or assuming continuing care contracts; the submission of disclosure statements by hazardous waste control applicants; authorized excess funds investments for domestic life insurers; authorized investments for reserves of annuity contracts; and authorized investments by certain governmental retirement systems in common and preferred stock, as specified.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1300 of the Corporations Code is  
2 amended to read:  
3 1300. (a) If the approval of the outstanding shares  
4 (Section 152) of a corporation is required for a  
5 reorganization under subdivisions (a) and (b) or

1 subdivision (e) or (f) of Section 1201, each shareholder of  
2 the corporation entitled to vote on the transaction and  
3 each shareholder of a subsidiary corporation in a  
4 short-form merger may, by complying with this chapter,  
5 require the corporation in which the shareholder holds  
6 shares to purchase for cash at their fair market value the  
7 shares owned by the shareholder which are dissenting  
8 shares as defined in subdivision (b). The fair market value  
9 shall be determined as of the day before the first  
10 announcement of the terms of the proposed  
11 reorganization or short-form merger, excluding any  
12 appreciation or depreciation in consequence of the  
13 proposed action, but adjusted for any stock split, reverse  
14 stock split, or share dividend which becomes effective  
15 thereafter.

16 (b) As used in this chapter, “dissenting shares” means  
17 shares which come within all of the following  
18 descriptions:

19 (1) Which were not immediately prior to the  
20 reorganization or short-form merger either (A) listed on  
21 any national securities exchange certified by the  
22 Commissioner of Corporations under subdivision (o) of  
23 Section 25100 or (B) listed on the National Market  
24 System of the NASDAQ Stock Market, and the notice of  
25 meeting of shareholders to act upon the reorganization  
26 summarizes this section and Sections 1301, 1302, 1303 and  
27 1304; provided, however, that this provision does not  
28 apply to any shares with respect to which there exists any  
29 restriction on transfer imposed by the corporation or by  
30 any law or regulation; and provided, further, that this  
31 provision does not apply to any class of shares described  
32 in subparagraph (A) or (B) if demands for payment are  
33 filed with respect to 5 percent or more of the outstanding  
34 shares of that class.

35 (2) Which were outstanding on the date for the  
36 determination of shareholders entitled to vote on the  
37 reorganization and (A) were not voted in favor of the  
38 reorganization or, (B) if described in subparagraph (A)  
39 or (B) of paragraph (1) (without regard to the provisos  
40 in that paragraph), were voted against the

1 reorganization, or which were held of record on the  
2 effective date of a short-form merger; provided, however,  
3 that subparagraph (A) rather than subparagraph (B) of  
4 this paragraph applies in any case where the approval  
5 required by Section 1201 is sought by written consent  
6 rather than at a meeting.

7 (3) Which the dissenting shareholder has demanded  
8 that the corporation purchase at their fair market value,  
9 in accordance with Section 1301.

10 (4) Which the dissenting shareholder has submitted  
11 for endorsement, in accordance with Section 1302.

12 (c) As used in this chapter, “dissenting shareholder”  
13 means the recordholder of dissenting shares and includes  
14 a transferee of record.

15 ~~SEC. 2. Section 2115 of the Corporations Code is~~  
16 ~~amended to read:~~

17 ~~2115. (a) A foreign corporation (other than a foreign~~  
18 ~~association or foreign nonprofit corporation but including~~  
19 ~~a foreign parent corporation even though it does not itself~~  
20 ~~transact intrastate business) is subject to the~~  
21 ~~requirements of subdivision (b), commencing on the~~  
22 ~~date specified in subdivision (d) and continuing until the~~  
23 ~~date specified in subdivision (e), if, with respect to a full~~  
24 ~~income year:~~

25 ~~(1) the average of the property factor, the payroll~~  
26 ~~factor, and the sales factor (as defined in Sections 25129,~~  
27 ~~25132, and 25134 of the Revenue and Taxation Code) with~~  
28 ~~respect to it is more than 50 percent during the full~~  
29 ~~income year; and~~

30 ~~(2) more than one-half of its outstanding voting~~  
31 ~~securities are held of record by persons having addresses~~  
32 ~~in this state appearing on the books of the corporation on~~  
33 ~~the record date for the latest meeting of shareholders~~  
34 ~~held during the full income year, or, if no meeting of~~  
35 ~~shareholders was held during that year, on the date~~  
36 ~~specified in the articles of incorporation or bylaws for the~~  
37 ~~holding of the annual meeting of shareholders during that~~  
38 ~~year, or, if that date is not specified, on the last day of the~~  
39 ~~full income year.~~

1     ~~The property factor, payroll factor, and sales factor~~  
2     ~~shall be those used in computing the portion of its income~~  
3     ~~allocable to this state in its franchise tax return or, with~~  
4     ~~respect to corporations the allocation of whose income is~~  
5     ~~governed by special formulas or that are not required to~~  
6     ~~file separate or any tax returns, which would have been~~  
7     ~~so used if they were governed by this three-factor~~  
8     ~~formula. The determination of these factors with respect~~  
9     ~~to any parent corporation shall be made on a consolidated~~  
10    ~~basis, including in a unitary computation (after~~  
11    ~~elimination of intercompany transactions) the property,~~  
12    ~~payroll, and sales of the parent and all of its subsidiaries~~  
13    ~~in which it owns directly or indirectly more than 50~~  
14    ~~percent of the outstanding shares entitled to vote for the~~  
15    ~~election of directors, but deducting a percentage of the~~  
16    ~~property, payroll, and sales of any subsidiary equal to the~~  
17    ~~percentage minority ownership, if any, in the subsidiary.~~

18    ~~For the purpose of this subdivision, any securities held~~  
19    ~~to the knowledge of the issuer in the names of~~  
20    ~~broker-dealers, nominees for broker-dealers (including~~  
21    ~~clearing corporations), or banks, associations, or other~~  
22    ~~entities holding securities in a nominee name or~~  
23    ~~otherwise on behalf of a beneficial owner (collectively~~  
24    ~~“Nominee Holders”), shall not be considered~~  
25    ~~outstanding. However, if the foreign corporation requests~~  
26    ~~all Nominee Holders to certify, with respect to all~~  
27    ~~beneficial owners for whom securities are held, the~~  
28    ~~number of shares held for those beneficial owners having~~  
29    ~~addresses (as shown on the records of the Nominee~~  
30    ~~Holder) in this state and outside of this state, then all~~  
31    ~~shares so certified shall be considered outstanding and~~  
32    ~~held of record by persons having addresses either in this~~  
33    ~~state or outside of this state as so certified, provided that~~  
34    ~~the certification so provided shall be retained with the~~  
35    ~~record of shareholders and made available for inspection~~  
36    ~~and copying in the same manner as is provided in Section~~  
37    ~~1600 with respect to that record. A current list of~~  
38    ~~beneficial owners of a foreign corporation’s securities~~  
39    ~~provided to the corporation by one or more Nominee~~  
40    ~~Holders or their agent pursuant to the requirements of~~

~~Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992, promulgated under the Securities Exchange Act of 1934, shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.~~

~~(b) Except as provided in subdivision (c), the following chapters and sections of this division shall apply to a foreign corporation as defined in subdivision (a) (to the exclusion of the law of the jurisdiction in which it is incorporated):~~

~~Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;~~

~~Section 301 (annual election of directors);~~

~~Section 303 (removal of directors without cause);~~

~~Section 304 (removal of directors by court proceedings);~~

~~Section 305, subdivision (c) (filling of director vacancies where less than a majority in office elected by shareholders);~~

~~Section 309 (directors' standard of care);~~

~~Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);~~

~~Section 317 (indemnification of directors, officers, and others);~~

~~Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);~~

~~Section 506 (liability of shareholder who receives unlawful distribution);~~

~~Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);~~

~~Section 708, subdivisions (a), (b), and (c) (shareholder's right to cumulate votes at any election of directors);~~

~~Section 710 (supermajority vote requirement);~~

~~Section 1001, subdivision (d) (limitations on sale of assets);~~

~~Section 1101 (provisions following subdivision (c)) (limitations on mergers);~~

1 Chapter 12 (commencing with Section 1200)  
2 (reorganizations);  
3 Chapter 13 (commencing with Section 1300)  
4 (dissenters' rights);  
5 Sections 1500 and 1501 (records and reports);  
6 Section 1508 (action by Attorney General);  
7 Chapter 16 (commencing with Section 1600) (rights of  
8 inspection).

9 (c) This section does not apply to any corporation (1)  
10 with outstanding securities listed on the New York Stock  
11 Exchange or the American Stock Exchange, or (2) with  
12 outstanding securities designated as qualified for trading  
13 on the NASDAQ National Market (or any successor  
14 thereto), of the NASDAQ Stock Market operated by the  
15 NASDAQ Stock Market Inc., or (3) if all of its voting  
16 shares (other than directors' qualifying shares) are  
17 owned directly or indirectly by a corporation or  
18 corporations not subject to this section.

19 (d) For purposes of subdivision (a), the requirements  
20 of subdivision (b) shall become applicable to a foreign  
21 corporation only upon the first day of the first income  
22 year of the corporation (i) commencing on or after the  
23 135th day of the income year immediately following a full  
24 income year with respect to which the tests referred to  
25 in subdivision (a) have been met or (ii) commencing on  
26 or after the entry of a final order by a court of competent  
27 jurisdiction declaring that those tests have been met.

28 (e) For purposes of subdivision (a), the requirements  
29 of subdivision (b) shall cease to be applicable to a foreign  
30 corporation (i) at the end of the first income year of the  
31 corporation immediately following a full income year  
32 with respect to which at least one of the tests referred to  
33 in subdivision (a) is not met or (ii) at the end of the  
34 income year of the corporation during which a final order  
35 has been entered by a court of competent jurisdiction  
36 declaring that one of those tests is not met, provided that  
37 a contrary order has not been entered before the end of  
38 the income year.

39 (f) Any foreign corporation that is subject to the  
40 requirements of paragraph (1) of subdivision (b) shall



~~1 advise any shareholder of record, any officer, director,  
2 employee, or other agent (within the meaning of Section  
3 317) and any creditor of the corporation, in writing,  
4 within 30 days after receipt of a written request for that  
5 information, whether or not it is subject to paragraph (1)  
6 of subdivision (b) at the time the request is received. If  
7 any party obtains a final determination in a court of  
8 competent jurisdiction that the corporation failed to  
9 provide to that party information required to be provided  
10 under this subdivision, or provided information that was  
11 incorrect, then the court, in its discretion, may include in  
12 its judgment recovery by that party from the corporation  
13 of all court costs and reasonable attorney's fees incurred  
14 in that legal proceeding to the extent they relate to  
15 obtaining that final determination.~~

~~16 SEC. 3. Section 2200 of the Corporations Code is  
17 amended to read:~~

~~18 2200. Every corporation which neglects, fails or  
19 refuses: (a) to keep or cause to be kept or maintained the  
20 record of shareholders or books of account required by  
21 this division to be kept or maintained, (b) to prepare or  
22 cause to be prepared or submitted the financial  
23 statements required by this division to be prepared or  
24 submitted, or (c) to give any shareholder of record the  
25 advice required by subdivision (f) of Section 2115, is  
26 subject to penalty as provided in this section.~~

~~27 The penalty shall be twenty-five dollars (\$25) for each  
28 day that such failure or refusal continues, up to a  
29 maximum of one thousand five hundred dollars (\$1,500),  
30 beginning 30 days after receipt of written request that the  
31 duty be performed from one entitled to make the  
32 request, except that, in the case of a failure to give advice  
33 required by subdivision (f) of Section 2115, the 30-day  
34 period shall run from the date of receipt of the request  
35 made pursuant to that subdivision and no additional  
36 request shall be required by this section.~~

~~37 The penalty shall be paid to the shareholder or  
38 shareholders jointly making the request for performance  
39 of the duty and damaged by the neglect, failure or refusal,  
40 if suit therefor is commenced within 90 days after the~~

~~1 written request is made, including any request made  
2 pursuant to subdivision (f) of Section 2115; but the  
3 maximum daily penalty because of failure to comply with  
4 any number of separate requests made on any one day or  
5 for the same act shall be two hundred fifty dollars (\$250).~~

~~6 SEC. 4.~~

7 SEC. 2. Section 25219 of the Corporations Code is  
8 amended to read:

9 25219. Notwithstanding any other provision of this  
10 division, if in his or her opinion the public interest and the  
11 protection of investors so require, the commissioner is  
12 authorized summarily to suspend all over-the-counter  
13 trading in this state by broker-dealers and agents in any  
14 security or summarily to suspend all trading on a national  
15 securities exchange located in this state in any security  
16 (provided, in the case of trading on ~~such~~ *that* exchange,  
17 that the security is not listed on the National Market  
18 System of the NASDAQ Stock Market *or* any national  
19 securities exchange located outside this state on which  
20 trading has not been suspended) for a period not  
21 exceeding 90 days, and for successive periods of 90 days.  
22 No broker-dealer or agent shall effect any transaction  
23 (other than an unsolicited brokerage transaction effected  
24 on the National Market System of the NASDAQ Stock  
25 Market or on a national securities exchange located  
26 outside this state) in, or induce or attempt to induce the  
27 purchase or sale of, any security in this state in which  
28 trading is in any manner suspended under this section,  
29 except in performance of a contract previously entered  
30 into.

31 ~~SEC. 5.~~

32 SEC. 3. Section 45308.5 of the Government Code is  
33 amended to read:

34 45308.5. Notwithstanding Section 45308.1, in addition  
35 to any other investments as are authorized by this article,  
36 city retirement systems may in their discretion under the  
37 advice of proper counsel invest the assets of the  
38 retirement fund in an amount, determined on the basis  
39 of cost, not to exceed 10 percent of the assets in the first  
40 two years after the effective date of this section, not to

1 exceed 15 percent during the third year after the  
2 effective date of this section, and not to exceed 25 percent  
3 thereafter, in common stock or shares, and not to exceed  
4 2 percent of the assets in the first year after the effective  
5 date of this section, not to exceed 3 percent during the  
6 second year after the effective date of this section, and not  
7 to exceed 5 percent thereafter, in preferred stock or  
8 shares, of corporations created or existing under the laws  
9 of the United States, or any state, district, or territory  
10 thereof; provided that

11 (a) The stock is registered on a national securities  
12 exchange, as provided in the "Securities Exchange Act of  
13 1934" as amended—as, *or is* listed on the National Market  
14 System of the NASDAQ Stock Market. The registration  
15 shall not be required with respect to the following stocks:

16 (1) The common stock of a bank which is a member of  
17 the Federal Deposit Insurance Corporation and has  
18 capital funds, represented by capital, surplus, and  
19 undivided profits, of at least fifty million dollars  
20 (\$50,000,000);

21 (2) The common stock of an insurance company  
22 which has capital funds, represented by capital, special  
23 surplus funds, and unassigned surplus, of at least fifty  
24 million dollars (\$50,000,000);

25 (3) Any preferred stock.

26 (b) The corporation has total assets of at least one  
27 hundred million dollars (\$100,000,000);

28 (c) Bonds of that corporation, if any are outstanding,  
29 qualify for investment of the retirement fund, and that  
30 there are no arrears of dividend payments on its  
31 preferred stock;

32 (d) The corporation has paid a cash dividend on its  
33 common stock in at least 8 of the 10 years next preceding  
34 the date of investment, and the aggregate net earnings  
35 available for dividends on the common stock of the  
36 corporation for the whole of that period have been equal  
37 to the amount of the dividends paid, and the corporation  
38 has paid an earned cash dividend in each of the last three  
39 years;

(e) The investment in any one company may not exceed 5 percent of the common shares outstanding; and

(f) No single common stock investment, based on cost, may exceed 2 percent of the assets of the fund.

~~SEC. 6.~~

SEC. 4. Section 1170.3 of the Harbors and Navigation Code is amended to read:

1170.3. (a) The board shall adopt, by regulation, a pilot's conflict-of-interest code which shall include, but not be limited to, a provision specifying that a pilot shall not have any interest in, or derive any income from, any tugboat in operation on the Bays of San Francisco, San Pablo, and Suisun. This requirement of divestiture does not apply to the ownership of barges and vessels similar to barges.

(b) The conflict-of-interest code shall not prohibit the ownership of stock in any corporation registered on a national securities exchange or on the National Market System of the NASDAQ Stock Market, pursuant to Section 78f of Title 15 of the United States Code, which may own tugboats in operation on the Bays of San Francisco, San Pablo, and Suisun.

~~SEC. 7.~~

SEC. 5. Section 1792.2 of the Health and Safety Code is amended to read:

1792.2. (a) Any entity that has executed or assumed continuing care contracts shall maintain reserves covering obligations thereunder.

(b) The following assumptions shall be used when calculating the reserves:

(1) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475
58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513

1	61	21.703	19.163	89	5.200	4.236
2	62	20.972	18.457	90	4.838	3.957
3	63	20.253	17.764	91	4.501	3.670
4	64	19.545	17.083	92	4.175	3.388
5	65	18.849	16.414	93	3.862	3.129
6	66	18.165	15.759	94	3.579	2.903
7	67	17.493	15.116	95	3.329	2.705
8	68	16.832	14.486	96	3.109	2.533
9	69	16.182	13.869	97	2.914	2.384
10	70	15.553	13.268	98	2.741	2.254
11	71	14.965	12.676	99	2.584	2.137
12	72	14.367	12.073	100	2.433	2.026
13	73	13.761	11.445	101	2.289	1.919
14	74	13.189	10.830	102	2.152	1.818
15	75	12.607	10.243	103	2.022	1.723
16	76	12.011	9.673	104	1.899	1.637
17	77	11.394	9.139	105	1.784	1.563
18	78	10.779	8.641	106	1.679	1.510
19	79	10.184	8.159	107	1.588	1.500
20	80	9.620	7.672	108	1.522	1.500
21	81	9.060	7.188	109	1.500	1.500
22	82	8.501	6.719	110	1.500	1.500

23

24 The life expectancy table set forth in this paragraph  
25 shall be used until this section is amended.

26 (2) For residents over 110 years of age use 1.500 for  
27 computing the statutory reserve requirements.

28 (3) If a continuing care retirement community has  
29 contracted with a resident under 55 years of age, provide  
30 the department with the methodology used to determine  
31 that resident's life expectancy.

32 (4) A zero interest assumption shall be used to adjust  
33 resident life expectancies in conjunction with the  
34 computation of the statutory reserve requirement.

35 (c) The reserves shall be calculated by progressing  
36 through each of the following steps:

37 (1) Compute net cash per capita costs:

38 (A) Cash operating expenses: Deduct: depreciation  
39 and other noncash expenses; processing fees; community  
40 services; expenses that will not be incurred in future



1 years; reimbursements for services to nonresidents;  
2 donated services, if included as an operating expense on  
3 the income statement; investment income; contributions  
4 received; and other items that the continuing care  
5 retirement community reasonably believes should be  
6 deducted with accompanying explanation.

7 For a continuing care retirement community in its first  
8 year of operation or following a major addition to an  
9 existing continuing care retirement community, cash  
10 operating expenses for calculating reserve requirements  
11 may be classified as fixed or variable and totaled  
12 separately.

13 (B) Mean number of residents by level of care: List  
14 the number of residents for each level of care separately  
15 at the beginning of the fiscal year. Add the number of  
16 residents for each level of care separately at the end of the  
17 fiscal year. Divide the total for each level of care by two.

18 (C) Total mean number of residents: Add the total  
19 number of residents at the beginning of the fiscal year to  
20 the total number of residents at the end of the fiscal year  
21 and divide by two. For continuing care retirement  
22 communities wherein resident population fluctuates  
23 significantly from month to month and for continuing  
24 care retirement communities in their first year of  
25 operation, the mean number of residents by level of care  
26 or the total mean number may be computed by adding  
27 the number of residents at the end of each month in the  
28 fiscal year and dividing by the total number of months  
29 included. The daily attendance for the fiscal year may also  
30 be used to determine the mean number of residents.

31 (D) Net cash per capita cost: Cash operating  
32 expenses divided by the mean number of residents. It is  
33 acceptable, but not required, to compute net cash per  
34 capita for various levels of care, based on allocated  
35 expenses and contributions from consolidated financial  
36 statements. Allocation methods shall be subject to the  
37 approval of the department, and schedules shall be  
38 prepared for all levels of care, including any levels not  
39 covered by continuing care contracts. For a continuing  
40 care retirement community in its first year of operation

1 or following a major addition to an existing continuing  
2 care retirement community, net cash per capita cost for  
3 calculating reserve requirements may be the sum of the  
4 figures determined by dividing fixed cash operating  
5 expenses by the number of residents at the end of the  
6 fiscal year, and dividing variable cash operating expenses  
7 by the mean number of residents.

8 (2) Compute projected life cost:

9 (A) Compute aggregate life expectancies: For each  
10 resident, compare age against the life expectancy table  
11 and total all life expectancies.

12 (B) Multiply net cash per capita costs by aggregate life  
13 expectancies.

14 (3) Compute five-year plan residents: Determine the  
15 maximum annual total of SSI/SSP payments for the year  
16 of entry for each resident. If that amount is greater than  
17 the amount of the entrance fee paid by a resident, the  
18 resident is designated a "Five-year Plan Resident" and  
19 the entrance fee is amortized over five years. No reserves  
20 are required for these residents after the fifth year.

21 (4) Compute projected life revenue:

22 (A) Annual fee: Multiply by 12 each monthly fee paid  
23 by residents, including payments to be made by  
24 third-party payers on behalf of the resident, including  
25 SSI/SSP and Medi-Cal, and contributions, donations, or  
26 endowments, that the provider actually used for  
27 operating expenditures for continuing care contracts  
28 during the fiscal year.

29 (B) Continuing care residents requiring full reserves:  
30 Enter the number of continuing care residents for each  
31 annual fee, excluding five-year plan residents.

32 (C) Aggregate life expectancies: For each resident,  
33 compare age against the life expectancy table and total all  
34 life expectancies for each annual fee.

35 (D) Total projected life revenue: Multiply each  
36 annual fee by aggregate life expectancies. Total the  
37 products obtained.

38 (5) Compute statutory reserve:

1 (A) Reserves not including five-year plan residents:  
2 Deduct the projected life revenue from the projected life  
3 cost. If the remainder is less than zero, use zero.

4 (B) Total statutory reserves: Add the total  
5 unamortized balance for five-year plan residents to the  
6 remainder in paragraph (A) above.

7 (6) Compute liquid asset portion of statutory reserve:  
8 For providers that have executed monthly fee contracts  
9 with at least one-half of the residents, compute 5 percent  
10 of the total statutory reserves. For providers that have  
11 executed prepaid contracts with at least one-half of the  
12 residents, compute 25 percent of the total statutory  
13 reserves.

14 (d) At least 25 percent of the statutory reserve shall  
15 consist of liquid assets, as defined in paragraph (8) of  
16 subdivision (e), except that a 5 percent requirement shall  
17 apply to the continuing care retirement communities  
18 that have executed monthly fee contracts with at least 50  
19 percent of the residents.

20 (e) The assets available for reserves shall consist of the  
21 following:

22 (1) Deposits in commercial and savings accounts with  
23 California banks that are members of the Federal Deposit  
24 Insurance Corporation.

25 (2) Notes receivable by the continuing care  
26 retirement community, that are secured by first deeds of  
27 trust and first mortgages on property not owned by the  
28 provider or its affiliates.

29 (3) Stocks, bonds, and securities, at current market  
30 value unless otherwise specified, shall meet the following  
31 criteria to be approved as assets available for statutory  
32 reserves:

33 (A) Highly liquid money securities, including, but not  
34 limited to, United States Treasury Bills, prime banker's  
35 acceptances, negotiable time certificates of deposit, and  
36 short-term tax-exempt notes.

37 (B) Common stocks rated "above average" or higher  
38 by any national rating agency. For example, a rating of  
39 A+, A, or A— by Standard and Poor's Corporation is  
40 required for common stock.





1 (C) Bonds issued by the United States government or  
2 federal agencies.

3 (D) Nonfederal bonds that have a current rating of at  
4 least “A” by Moody’s Investors Service, Standard and  
5 Poor’s Corporation, or Fitch Investors Service, and are  
6 listed on a national securities exchange or on the National  
7 Market System of the NASDAQ Stock Market.

8 (E) Bonds that are not listed on a national securities  
9 exchange or on the National Market System of the  
10 NASDAQ Stock Market, but are traded over-the-counter  
11 and have a current rating of at least “Aa” by Moody’s  
12 Investors Service or at least “AA” by Standard and Poor’s  
13 Corporation or Fitch’s Investors Service.

14 (F) The security interest in the cash surrender value  
15 of life insurance policies assigned by residents to the  
16 continuing care retirement community.

17 (4) Stocks, bonds, and securities that do not meet the  
18 approval criteria may be retained as part of the reserves  
19 with the specific approval of the department. If necessary  
20 to meet reserve requirements, stocks, bonds, and  
21 securities that are not approved by the department may  
22 be disposed of in a gradual manner, to avoid loss to  
23 certificate holders.

24 (5) Real estate used to provide care and housing for  
25 holders of continuing care contracts, or real estate, or  
26 equities therein, owned by the entity as an investment,  
27 the rents from which are used to discharge obligations to  
28 holders of continuing care contracts or to reinvest as a  
29 part of the reserves. These investments may be located  
30 outside the State of California.

31 (A) The value of this real estate shall be based on 70  
32 percent of the net equity thereof, which shall be the book  
33 value, assessed value, or current appraised value within  
34 12 months prior to the end of the fiscal year, less all  
35 encumbrances, depreciation, and the amount required  
36 for reserves for refundable contracts under Section 1793,  
37 all according to audited financial statements acceptable  
38 to the department.

39 (B) All appraisals shall be prepared by either a  
40 member of the American Institute of Appraisers or a

1 member of the Society of Real Estate Appraisers, or the  
2 county assessor. The department may require technical  
3 reports to be verified or certified, or both. The expense  
4 of any technical reports or any verifications thereof shall  
5 be borne by the provider.

6 (6) Seventy percent of the net equity in furniture and  
7 equipment situated on property used to provide care and  
8 housing for holders of continuing care contracts.

9 (7) Investment certificates or shares in open end  
10 investment trusts, that meet all of the following  
11 requirements:

12 (A) The trust management shall have experience  
13 either managing another mutual fund registered under  
14 the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1  
15 et seq.), or have been registered as an investment adviser  
16 under the Investment Advisors Act of 1940 (15 U.S.C. Sec.  
17 80b-1 et seq.), and in either case shall currently have at  
18 least one hundred million dollars (\$100,000,000) under its  
19 supervision.

20 (B) Qualified for sale in California.

21 (C) Has at least 40 percent of its directors or trustees  
22 not affiliated with the fund's management company or  
23 principal underwriter or any of their affiliates.

24 (D) Is registered under the Investment Company Act  
25 of 1940.

26 (E) Is a fund listed as qualifying under rules  
27 maintained by the Commissioner of Corporations in  
28 cooperation with the Department of Insurance.

29 (8) Liquid assets, if any, shall consist of the following:

30 (A) Listed bonds, stocks, and commercial and savings  
31 accounts.

32 (B) A sinking fund comprised of liquid assets, if it is a  
33 replacement fund subject to disbursement for items,  
34 including, but not limited to, payment of principal and  
35 interest on the mortgage or for operations during the  
36 succeeding year. Replacement funds, that may only be  
37 used for capital improvements or repairs, shall not be  
38 included in liquid reserves.



(9) Deposits made prior to signing a continuing care contract represent liabilities and shall be offset against liquid assets, if any, otherwise against any other assets.

(10) Deposits that represent funds turned over to the continuing care retirement community by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

~~SEC. 8.~~

*SEC. 6.* Section 25112.5 of the Health and Safety Code is amended to read:

25112.5. "Disclosure statement" means either of the following:

(a) A statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) The following persons listed on the disclosure statement shall submit properly completed fingerprint cards:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) Fingerprint cards submitted for any person required by paragraph (2) shall only be submitted once. Fingerprint cards shall be completed and submitted for any additional person only if there is a change in the

1 person serving in a position for which fingerprint cards  
2 are required to be submitted pursuant to paragraph (2).  
3 The department shall use the information required by  
4 paragraph (2) to positively identify the applicant.

5 (4) The full name and business address of any  
6 company which generates, transports, treats, stores,  
7 recycles, disposes of, or handles hazardous waste and  
8 hazardous materials in which the applicant holds at least  
9 a 5 percent debt liability or equity interest.

10 (5) A description of any local, state, or federal licenses,  
11 permits, or registrations for the generation,  
12 transportation, treatment, storage, recycling, disposal, or  
13 handling of hazardous waste or hazardous materials  
14 applied for, or possessed by the applicant, or by the  
15 applicant under any previous name or names, in the three  
16 years preceding the filing of the statement, or, if the  
17 applicant is a business concern, by the officers, directors,  
18 or partners of the business concern, including the name  
19 and address of the issuing agency.

20 (6) A listing and explanation of any final  
21 administrative orders or license revocations or  
22 suspensions issued or initiated by any local, state, or  
23 federal authority, in the three years immediately  
24 preceding the filing of the statement, or any civil or  
25 criminal prosecutions filed in the three years  
26 immediately preceding, or pending at the time of, the  
27 filing of the statement, with any remedial actions or  
28 resolutions if applicable, relating to the generation,  
29 transportation, treatment, storage, recycling, disposal, or  
30 handling of hazardous waste or hazardous materials by  
31 the applicant, or by the applicant under any previous  
32 name or names, or, if the applicant is a business concern,  
33 by any officer, director, or partner of the business  
34 concern.

35 (7) A listing of any agencies outside of the state which  
36 regulate, or had regulated, the applicant's, or the  
37 applicant's under any previous name or names,  
38 generation, transportation, treatment, storage, recycling,  
39 disposal, or handling of hazardous waste or hazardous

1 materials in the three years preceding the filing of the  
2 disclosure statement.

3 (8) A listing and explanation of any federal or state  
4 conviction, judgment, or settlement, in the three years  
5 immediately preceding the filing of the statement, with  
6 any remedial actions or resolutions if applicable, relating  
7 to the generation, transportation, treatment, storage,  
8 recycling, disposal, or handling of hazardous waste or  
9 hazardous materials by the applicant, or by the applicant  
10 under any previous name or names, or if the applicant is  
11 a business concern, by any officer, director, or partner of  
12 the business concern.

13 (9) A listing of all owners, officers, directors, trustees,  
14 and partners of the applicant who have owned, or been  
15 an officer, director, trustee, or partner of, any company  
16 which generated, transported, treated, stored, recycled,  
17 disposed of, or handled hazardous wastes or hazardous  
18 materials and which was the subject of any of the actions  
19 described in paragraphs (6) and (8) for the three years  
20 preceding the filing of the statement.

21 (b) In lieu of the statement specified in subdivision  
22 (a), a corporation, the stock of which is listed on a national  
23 securities exchange or on the National Market System of  
24 the NASDAQ Stock Market and registered under the  
25 Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et  
26 seq.), or a subsidiary of that corporation, may submit to  
27 the department copies of all periodic reports, including,  
28 but not limited to, those reports required by Section 78m  
29 of Title 15 of the United States Code and Part 229  
30 (commencing with Section 229.10) of Chapter II of Title  
31 17 of the Code of Federal Regulations which the  
32 corporation or subsidiary has filed with the Securities and  
33 Exchange Commission in the three years immediately  
34 preceding the submittal, if the corporation or subsidiary  
35 thereof has held a hazardous waste facility permit or  
36 operated a hazardous waste facility under interim status  
37 pursuant to Section 25200 or 25200.5 since January 1, 1984.

38 ~~SEC. 9.~~

39 SEC. 7. Section 1192.8 of the Insurance Code is  
40 amended to read:

1 1192.8. (a) A domestic life insurer having admitted  
2 assets aggregating in value not less than one hundred  
3 million dollars (\$100,000,000) may make excess fund  
4 investments pursuant to this section in interest-bearing  
5 notes, bonds, or obligations issued by (1) any operating  
6 business trust or limited partnership organized under the  
7 laws of any state of the United States, the District of  
8 Columbia, the Dominion of Canada, any province of the  
9 Dominion of Canada or (2) an authority established  
10 pursuant to the California Industrial Development  
11 Financing Act, Title 10 (commencing with Section 91500)  
12 of the Government Code. The issuer of the notes, bonds,  
13 or obligations through itself or its paying agent shall be  
14 obligated thereunder to make payments, with respect to  
15 the notes, bonds, or other obligations, directly to the  
16 insurer or the insurer's nominee.

17 (b) Except upon the prior written approval of the  
18 commissioner, an investment may not be made under the  
19 authority of this section unless the note, bond, or  
20 obligation is ~~exchange—traded~~ *exchange-traded*.  
21 “Exchange-traded,” as used in this subdivision, means  
22 listed and traded on the National Market System of the  
23 NASDAQ Stock Market or on a securities exchange  
24 subject to regulation, supervision, or control under a  
25 statute of the United States and acceptable to the  
26 commissioner.

27 (c) Without the prior written consent of the  
28 commissioner investment made pursuant to this section  
29 shall not exceed in the aggregate 10 percent of the life  
30 insurer's policyholder surplus.

31 (d) A request to the commissioner for (1) approval  
32 pursuant to subdivision (b) to invest in notes, bonds, or  
33 obligations that are not exchange-traded or ~~traded on the~~  
34 ~~National Market System of the NASDAQ Stock Market or~~  
35 (2) ~~for~~ consent to exceed the 10 percent limitation set  
36 forth in subdivision (c), shall be in writing and shall be  
37 accompanied by any supporting data and documentation  
38 that the commissioner may require. The commissioner  
39 shall require the payment of a five thousand dollar  
40 (\$5,000) fee in advance for the determination of whether

1 to approve or disapprove each request. Each request shall  
2 be in writing and shall be deemed approved unless the  
3 commissioner disapproves it within 60 days with respect  
4 to requests under subdivision (c) or 20 days with respect  
5 to requests under subdivision (b), after the request has  
6 been filed in the commissioner's office.

7 (e) This section shall not be construed to increase or  
8 reduce the authority to invest in any operating business  
9 trust or limited partnership specifically permitted in  
10 other sections of this code.

11 ~~SEC. 10. Section 11521.2 of the Insurance Code is~~  
12 ~~amended to read:~~

13 ~~11521.2. (a) The reserve required by the table of~~  
14 ~~commensurate values for each annuity contract issued~~  
15 ~~must be invested in investments specified in Sections 1170~~  
16 ~~through 1182 except that a certificate holder may invest~~  
17 ~~in securities listed and traded on the New York Stock~~  
18 ~~Exchange, the American Stock Exchange, regional stock~~  
19 ~~exchanges, or the National Market System of the~~  
20 ~~NASDAQ Stock Market or successors to those exchanges~~  
21 ~~or that market having the same qualifications, to the~~  
22 ~~extent of the lesser of net worth (assets over liabilities and~~  
23 ~~reserves) of the certificate holder or 10 percent of such~~  
24 ~~general investments. This section does not permit~~  
25 ~~investment in options or commodity exchanges.~~

26 ~~(b) The certificate holder may invest in any other~~  
27 ~~investments as permitted by and subject to the written~~  
28 ~~consent of the commissioner.~~